

REMARKS

Thorough examination of the application is sincerely appreciated.

Applicant wishes to thank the examiner for indicating the allowable subject matter of claims 7 and 15.

Applicant's claims were amended to remove European-type phraseology and address various formalities, as well as clarify and particularly point out the patentable subject matter of the present invention.

According to the Office Action, claim 16 was objected to due to an incorrect dependency. In response, claim 16 was amended to remove its dependency. Withdrawal of the objection is respectfully requested.

Further according to the Office Action, claims 3-5, 8, 11-13 and 16-18 were rejected under 35 USC 103(a) as being obvious over US Patent 6,850,559 (hereinafter "Driessen") in view of US Patent 3,700,820 (hereinafter "Blasbalg"). In response, the rejections are respectfully traversed as 1) lacking sufficient factual support, and 2) failing to establish a prima facie case of obviousness in accordance with the established cases and statutory law.

Referring to page 3 of the Office Action, it is conceded that Driessen, among other things, fails to disclose a number of features as recited in Applicant's claim 3. The examiner points to Blasbalg for the alleged disclosure to cure the deficiencies in Driessen. Applicant's representative has carefully reviewed the Blasbalg patent and failed to find such a disclosure in the patent, contrary to the examiner's remarks.

It is respectfully submitted that the examiner is factually wrong in relying on Blasbalg to supplement Driessen. The examiner indicates that the Blasbalg patent "teaches that as the error rate of the received signal increases the number of redundancy bits transmitted is increased to

compensate for the error causing conditions.” Applicant respectfully disagrees, as Blasbalg is completely silent on redundancy data or error of a communication channel, which are of relevance to Applicant’s claimed features. Blasbalg discloses the following:

“The instant adaptive system is one wherein the bit duration of the transmitted data is varied in accordance with the error rate of the received signal. Increasing the bit duration increases the energy of the transmitted data bit signal but also decreases the rate at which data is transmitted. Further, when the transmission rate is increased or decreased, the rate at which information arrives at the transmitter must also be increased or decreased since otherwise, a large buffer storage would be necessitated.”

It is not clear as to how the Blasbalg’s disclosure, exemplified in the above paragraph, is related to Applicant’s features of redundancy data and an error rate of the communication channel. Nowhere in his patent does Blasbalg show or teach, among other things, Applicant’s feature of “an added quantity of the redundancy data being a function of the priority level of a frame of primary digital data and of an error rate of the communication channel,” as recited in Applicant’s claim 3. Blasbalg merely teaches an adaptive multiplexer for time division multiplexing a plurality of digital input signals. Clearly, Blasbalg is completely silent on, for example, redundancy bits or error rate of a communication channel, as recited in Applicant’s claim 3. It is respectfully submitted that in the Office Action the examiner failed to cite specific portions of the Blasbalg patent allegedly disclosing the above-recited features of Applicant’s claim 3.

If the examiner still disagrees and believes otherwise, he is respectfully requested 1) to specifically point out where such a disclosure can be found in Blasbalg as the examiner fails to cite any text portions in the patent except an unsupported allegation; 2) to provide an affidavit stating facts within his personal knowledge; or 3) to provide a prior art reference stating the same, because the examiner’s interpretation of Blasbalg can’t be supported by the record.

Furthermore, it is unclear whether the examiner relies on personal knowledge of the facts or those of a skilled artisan in his statement. If this is the case, then “particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.” In re Kotzab, 1371.

The MPEP provides guidelines for relying on official notice and personal knowledge, which the Examiner did not follow in this case:

The rationale supporting an obviousness rejection may be based on common knowledge in the art of “well-known” prior art. The examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being “well-known” in the art ...

When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the applicant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the applicant and other persons.

See MPEP §2144.03. If the rejection is maintained, it is respectfully requested that the examiner provide an affidavit stating facts within his personal knowledge or an affidavit by a skilled artisan.

It is respectfully submitted that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on

applicant's disclosure. *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143-§2143.03 for decisions pertinent to each of these criteria.

Analyzing the references according to the above roadmap, first the examiner did not offer any motivation or suggestion to modify or combine Driessen and Blasbalg except for the unsupported, conclusory remark that "it would have been obvious ... to vary the quantity of CRC bits proportionally to the error rate of the communication channel for the purpose of reducing error to an acceptable level." It is not clear what the basis was for such a statement and how it related to Applicant's features. In contrast to the remarks in the Office Action, Driessen is directed to "the transmission of packets of multimedia data over a lossy channel," and Blasbalg is directed to "a communication system wherein the transmission rate is varied in accordance with the error parameters of the received signal." Driessen uses redundancy data, while Blasbalg – being completely silent on redundancy data – uses lower transmission rates to compensate for errors. There is no motivation or suggestion to combine the references as the concepts used in the two patents are not compatible.

Second, there is no reasonable expectation of success because the prior art references are not combinable, and they do not supplement each other.

Third, Driessen and Blasbalg, even when combined, do not teach Applicant's feature of "an added quantity of the redundancy data being a function of the priority level of a frame of primary digital data and of an error rate of the communication channel," as recited in claim 3 and discussed above. As argued above, the Applicant's features are not taught or suggested in the prior art references, and their combination is deficient in teaching or suggesting all the claim limitations.

Therefore, the cited references fail to render obvious the claimed invention, because the

above-identified criteria are not met. The claimed invention, according to claim 3, is thus distinguishable over the cited references.

Independent claims 11 and 16 contain, among other things, the features of claim 3 as discussed above. Applicant essentially repeats the same argument as above and asserts that claims 11 and 16 are also allowable for the same reasons as claim 3.

Claims 4, 5, 7, 8, 12, 13, 15 and 17-20 depend from independent claims, which have been shown to be allowable over the prior art reference. Accordingly, claims 4, 5, 7, 8, 12, 13, 15 and 17-20 are also allowable by virtue of their dependency, as well as the additional subject matter recited therein. Applicant submits that the reason for the rejection of claims 4, 5, 7, 8, 12, 13, 15 and 17-20 has been overcome and respectfully requests withdrawal of the rejection and allowance of the claims.

In view of the above, it is respectfully submitted that Driessen and Blasbalg, whether alone or in combination, do not anticipate or render obvious the present invention.

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. If there are any questions, the Examiner is respectfully requested to call the undersigned attorney at the number listed below.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

By /LARRY LIBERCHUK/
Larry Liberchuk, Reg. No. 40,352
Senior IP Counsel
Philips Electronics N.A. Corporation
914-333-9602

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